



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-Y-M-

DATE: AUG. 1, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school science teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that his work as a high school science teacher is in the national interest due to the need for qualified science teachers in North Dakota, and thus that a waiver of the job offer requirement should be granted.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a science teacher at [REDACTED] in [REDACTED] North Dakota, while also continuing to pursue his Ph.D. in educational leadership at the [REDACTED]. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he chooses to commute more than 100 miles per day to work in [REDACTED] "because I understand the importance of science education to high school students, and how difficult it is for school districts in rural areas to find qualified teachers." He also submitted letters from school and union officials, as well as colleagues, praising his skills as a teacher and noting the difficulty in finding science teachers in North Dakota. A press release from the [REDACTED] submitted in response to the Director's Notice of Intent to Deny, confirms the state's shortage in 14 subject areas, including science, and describes measures taken to recruit teachers. We find that the Petitioner's proposed work in teaching science to high school students in an educationally underserved area has substantial merit, as it provides educational benefits to his students.

However, the Petitioner has not submitted sufficient evidence demonstrating that his proposed endeavor is of national importance. While we acknowledge the Petitioner's dedication to educating students in an underserved area, the evidence does not establish that this work offers benefits that extend beyond his school or district to impact the field of education more broadly. The State of North Dakota's initiatives to address this problem may have impact at the state and even regional

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner presented a copy of his diploma and transcripts establishing that he was awarded a Master of Arts degree in Special Education by [REDACTED] in 2011. See 8 C.F.R. § 204.5(k)(3)(i)(A).

level, but the Petitioner has not shown that his work as a teacher at [REDACTED] will have that level of impact. Accordingly, the Petitioner has not met the first prong of the *Dhanasar* framework.⁴

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submitted his academic records, letters confirming his employment history as a teacher, and employment contracts from the two public schools where he has taught science for the past four years. As mentioned above, he also submitted letters from colleagues and officials at those schools which praise his ability as a high school science teacher. The evidence demonstrates the Petitioner's qualifications as a teacher, his experience in and commitment to teaching science to students, and the support from colleagues and supervisors. We therefore find that the Petitioner has established that he is well positioned to advance his proposed endeavor of teaching science to high school students in underserved areas, and satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, experience as a teacher and dedication to educate students in underserved areas. However, as the Petitioner has not established that his endeavor is of national importance as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of A-Y-M-*, ID# 1441258 (AAO Aug. 1, 2018)

⁴ In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.